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Forty-second session

SUMMARY RECORD OF THE 1066th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 July 1991, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.15 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN drew attention to the Working Group's recommendation concerning the list of issues to be taken up in connection with the consideration of the third periodic report of Iraq (CCPR/C.64/Add.6) and invited the Committee to consider the list section by section.

Section I

2. Mr. SADI asked whether the list was based on a standard United Nations procedure. In particular, was the Committee to some extent bound by the periodic report submitted by the State party or was it free to formulate questions outside that framework?

3. Mr. AGUILAR URBINA said that, unless and until the Committee decided otherwise, the Working Group would tend to base itself on the State party's report, although the Committee was of course to a much greater extent bound by the Covenant.

4. Mr. WENNERGREN said it was his understanding that the main purpose of compiling a list of issues in advance was to enable members to take into account information available from non-governmental organizations or other sources when formulating their questions.

5. Mr. NDIAYE said that the Committee, when putting questions to the State party's delegation, was in no sense bound by the content of the State party's periodic report; its attitude had to be dictated by the rights enunciated in the Covenant. If the information provided in the report was inadequate, it was the Committee's right and duty to make searching further inquiries.

6. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Committee's previous practice had been for the Secretariat to prepare well in advance an analytical study based on the State party's report, the summary records of discussions of previous periodic reports by the State party and information available from non-governmental organizations, so as to enable the Committee to prepare a list of issues for presentation to the State party's delegation. It had subsequently been decided to appoint a country rapporteur to act as coordinator for a particular draft list in respect of its examination by the Working Group and subsequently by the Committee in plenary. He confirmed that the Committee did in fact receive information direct from non-governmental organizations.

7. Mrs. HIGGINS, supported by Mr. EL SHAFEI, said that in the present case the Committee had to strike a balance between questions deriving directly from the third periodic report by the State party and questions on specific issues of concern to the Committee; some questions in the draft list appeared naive, since the Committee already knew the answers to them.

8. Mr. SADI, referring to subsection (a), suggested that the Committee should avoid wasting time on questions, the answers to which were self-evident, in view of the undisputed illegality of the situaton.

9. Mr. NDIAYE said that nevertheless it was the Committee's function to elicit answers in regard to a State party's behaviour under the Covenant. Iraq had to render account for the treatment of persons under its jurisdiction. The Covenant did not discriminate between persons legally or illegally under a State party's jurisdiction.

10. Mrs. HIGGINS suggested that, in order to avoid discussing the issues of annexation and de facto regimes, the Committee might simply ask, under subsection (a) of the list of issues, what orders and instructions had been issued to the Iraqi forces in regard to the protection of human rights in Kuwait.

11. Mr. SADI pointed out that it might constitute an unfortunate precedent to ask States parties to report on their behaviour in territories which they had occupied in the past.

12. The CHAIRMAN said that the second periodic report of Iraq had been due on 4 April 1985 and the third periodic report on 4 April 1990. A report had finally been submitted on 5 June 1991, so that it in fact covered the whole period from 4 April 1985 to 5 June 1991.

13. Mr. MAVROMMATIS said that the issue was very simple. Whatever general formulation was adopted, it was quite clear that members of the Committee were entitled to pose any questions that they wished. Obligations under the Covenant remained in force and continued to apply irrespective of the circumstances.

14. Mr. NDIAYE pointed out that the Committee could always rely on article 1 of the Covenant, which provided categorically for the right to self-determination.

15. Mrs. HIGGINS said that a general formulation would enable the Committee to ask for details of Iraq's behaviour in Kuwait in connection with article 2 of the Covenant, which required a State party to respect the rights of all persons subject to its jurisdiction, without distinction of any kind.

16. The CHAIRMAN asked why some passages in the list were in square brackets.

17. Mr. AGUILAR URBINA said that the Working Group had been unable to reach agreement on certain paragraphs, which had accordingly been placed in square brackets. In subsection (e), the English word "rioters" had been used by Mr. Dimitrijevic, but Mr. Wennergren had felt unable to accept that term. The matter had therefore been left for a decision by the plenary Committee.

18. Mr. EL SHAFEI said he was not entirely clear what was the intention of the question in subsection (e).

19. Mr. DIMITRIJEVIC said the nationality of the rioters was uncertain and the question had been put forward in order to determine who in fact they were. He proposed that the question should remain in the list with the square brackets deleted.

20. Mr. MAVROMMATIS said that the Committee appeared to be in general agreement on that issue. Since everyone was well aware that the time available for putting questions was limited, the Committee should concentrate on the main articles of the Covenant and leave the remaining questions to the next session.

21. The CHAIRMAN said that, at a recent meeting of the Bureau, it had been found that the total time available - one afternoon meeting and two further morning and afternoon meetings - was insufficient for full consideration of the State party's report. It had therefore been proposed to recommend that the Committee should merely examine the more urgent questions at the current session, leaving the remainder for examination at a later date, as Mr. Mavrommatis had suggested. The division of the consideration of a State party's report between two sessions was not in fact unprecedented.

22. Mr. NDIAYE said that much would depend on the spirit of cooperation shown by the Iraqi delegation. He thought that the Committee should proceed in the usual manner and wait until the end of each meeting to see how many of the issues on the list had been covered before envisaging the possibility of holding additional meeting on the report.

23. Mrs. HIGGINS said that she had difficulty in accepting Mr. Ndiaye's suggestion and thought that if the Committee proceeded in its normal manner it would not have sufficient time to cover all the issues on the list.

24. Mr. DIMITRIJEVIC thought that the Committee should adopt the list and indicate to the Chairman the order in which the issues should be considered.

25. The CHAIRMAN suggested that the Committee should first adopt the list of issues and then decide on the order in which the various issues would be taken up.

26. If he heard no objection, he would take it that the Committee agreed to adopt section I and to delete the square brackets around subsection (e).

27. Section I, as amended, was adopted.

Section II

28. Mr. EL SHAFEI, referring to the question in subsection (b), said that the people of Kuwait lived in an independent State under a sovereign Government. The Committee should not include such a question, which he considered to be an insult to the people of Kuwait.

29. Mrs. HIGGINS agreed with Mr. El Shafei. She proposed that the paragraph in question should be replaced by the following text: "Please comment on the events of 2 August 1990 in the light of Iraq's obligations under article 1 of the Covenant."

30. Section II, as amended, was adopted.

Section III

31. Section III was adopted.

SectionIV

32. Following a discussion in which Mr. NDIAYE, Mr. AGUILAR URBINA and Mr. MAVROMMATIS took part, the CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to delete the section and to renumber the subsequent sections accordingly.

33. It was so decided.

New section IV

34. Mr. EL SHAFEI, referring to subsection (d) (i), said that as far as he was aware, the rules and regulations in question had called for the police and security forces to open fire. He therefore wondered what kind of reply could be expected from the Government.

35. With regard to subsection (d) (ii), he pointed out that there had been an uprising against the regime and that the police and security forces had been instructed to shoot. He therefore felt that the question was not relevant.

36. Mr. SADI, referring to subsection (f), wondered whether Iraq was in any position to provide an estimate of actual casualties and disappearances as well as potential threats to life in Kuwait resulting from military operations by Iraqi troops, including the deliberate setting on fire of oil wells. He thought that greater emphasis should be given to the deliberate setting on fire of oil wells per se, in order to reflect the gravity of that act, which was so catastrophic that it could not be mentioned only in passing.

37. Mrs. HIGGINS agreed that it would be difficult to estimate the number of threats to life resulting from the deliberate setting on fire of oil wells. She would prefer to focus on the question of redress. In that regard, she proposed the following text: "Please provide details about the redress being made available in respect of casualties and disappearances in Kuwait, following the events of 2 August 1990. Please provide details about the redress being made available for damage to the right to life resulting from the deliberate setting on fire of oil wells."

38. Subsection (f), as amended, was adopted.

39. Mr. NDIAYE thought that the first sentence in subsection (a) should be deleted, since the same question had been taken up during the consideration of Iraq's second periodic report.

40. In response to a point raised by Mrs. HIGGINS, Mr. NDIAYE drew attention to the third sentence of paragraph 29 of the report of Iraq (CCPR/C/64/Add.6) and said that, since the Iraqi authorities had not completed the review in question, they could not be expected to provide a more detailed reply.

41. Mr. DIMITRIJEVIC thought that the matter might be resolved by replacing the first sentence by the following text: "Has the number of offences punishable by the death penalty according to existing Iraqi law increased or decreased in the period under review?".

42. Mr. MAVROMMATIS said that article 6 was one of the articles to which the Committee should devote particular attention. He feared that by including subsections (a), (b), (c) and (d) the Committee was distracting attention from subsections (e) and (f), which in his view posed the most important topical issues. By asking questions about normal times, the Committee was in fact providing the Government of Iraq with a means of evading those questions that were currently of greatest significance.

43. Mrs. HIGGINS said that, although she appreciated the importance of focusing on contemporary issues, she felt that the Committee should also concern itself with the kind of questions raised by subsection (a), as they affected a large number of citizens of Iraq, regardless of recent events.

44. Mr. DIMITRIJEVIC said that, while he appreciated that the time that had elapsed since the submission of the report was very short, the question on Decree No. 840 of the Revolutionary Command Council was extremely important, as many people had been liquidated under that Decree, which was not mentioned in the report. Accordingly, he felt that that question should be retained, if not in subsection (a), then elsewhere in the list.

45. The CHAIRMAN said that, in the light of the comments made, he would take it that all but the last sentence of subsection (a) should be deleted.

46. Subsection (a), as amended, was adopted.

47. Subsections (b) and (c) were adopted.

48. Mr. DIMITRIJEVIC endorsed Mr. El Shafei's remarks concerning subsection (d) (i), and suggested that the words "in particular with regard to the 'riots' referred to in the report", should be deleted.

49. Subsection (d), as amended, was adopted.

50. Subsection (e) was adopted.

New section V

51. Mrs. HIGGINS said that she had no problems with the existing questions in new section V but felt that special reference should be made to recent events. She proposed adding the question: "Have all Kuwaitis taken to Iraq as prisoners after 2 August 1990 been released or accounted for?".

52. It was so decided.

53. Mr. NDIAYE wondered whether there was any need to retain the first question in subsection (a), as paragraph 30 of the Iraq report stated that officials had been tried and convicted for practising torture.

54. The CHAIRMAN said that such a change would mean that the second sentence would also require some modification.

55. Subsection (a), as amended, was adopted.

56. Subsection (b) was adopted.

57. The CHAIRMAN asked Mr. Aguilar Urbina to clarify the reason for the square brackets in subsections (c) and (d).

58. Mr. AGUILAR URBINA said that the question in subsection (c) was a highly specific one, while the question in subsection (d) was one that was always put. In view of the lack of time, the Working Group had considered the possibility of deleting those questions in order to facilitate consideration of issues under article 7, in particular.

59. Mr. MAVROMMATIS suggested that subsections (c) and (d) should be deleted.

60. It was so decided.

61. New section V, as amended, was adopted.

New sections VI and VII

62. New sections VI and VII were adopted.

New section VIII

63. Mr. MAVROMMATIS proposed inserting the words "consistent with the Covenant" after the word "basis" in the second question under subsection (a).

64. New section VIII, as amended, was adopted.

New section IX

65. Mr. NDIAYE suggested that the words "other than those officially recognized in Iraq" should be deleted from subsection (a).

66. New section IX, as amended, was adopted.

New section X

67. Mr. SADI said that he wished to add the following specific question to the section: "How does Iraq reconcile the existence of a one-party system with the spirit and letter of articles 21 and 22 of the Covenant?"

68. Mrs. HIGGINS said that, although she sympathized with Mr. Sadi's concern, the Committee's current practice was to ask questions on the multi-party system, in connection with article 25 of the Covenant. The issue would be clearer when the Committee had prepared its general comment on article 25. Consequently, she felt that including such a question under articles 21 and 22 of the Covenant was likely further to complicate the issue.

69. Mr. MAVROMMATIS endorsed Mrs. Higgins' remarks. It was best to leave it to individual members to put the question at the moment they felt most appropriate.

70. Mr. SADI said that he had no objection to putting the question under article 25 of the Covenant, but he felt that the incompatibility of the one-party system with the provisions of articles 21 and 22 was so blatant that the question should be put systematically.

71. Mr. DIMITRIJEVIC said that he shared the view of Mr. Mavrommatis. The Committee was at a turning-point, as in the past it had entertained many reports from countries with one-party systems without any difficulty. Some members of the Committee had even said that the Covenant did not necessarily imply political pluralism. The issue should be given careful thought before the Committee took a course that might be interpreted as implying a commitment to the multi-party system.

72. The CHAIRMAN said that, while he sympathized with Mr. Sadi's suggestion, it would represent a departure from the Committee's previous practice at a moment which was not very appropriate.

73. Mr. AGUILAR URBINA endorsed the views expressed by Mr. Dimitrijevic and Mr. Mavrommatis. Mr. Sadi's suggestion was very important, but it should be considered and discussed in depth by the Committee as it marked a departure from the Committee's previous practice.

74. Mr. SADI said that, when the Covenant had been drafted, the one-party system had been widely accepted. However, times had changed and a new consensus over the desirability of a multi-party system was emerging throughout the world, which the Committee should take into account. The issue should be discussed in connection with the Committee's general comments; if the Committee failed to accommodate the emerging consensus, it would find itself behind the times rather than in the vanguard.

75. Mr. NDIAYE asked for clarification of the expression "fraudulently to join the Ba'ath Party" in subsection (b). Had the term been taken from the report and was it a mistranslation?

76. Mr. DIMITRIJEVIC said that the analytical review of the report by the Secretariat had revealed that one of the questions that had remained unanswered concerned the offence committed by a person who joined the Ba'ath Party while concealing that he or she had been a member of another political party or failing to disclose other personal details. Defecting from the Ba'ath Party also carried the death penalty.

77. Mrs. HIGGINS suggested replacing the expression "fraudulently to join the Ba'ath Party" by "to join the Ba'ath Party without full disclosure".

78. New section X, as amended, was adopted.

New section XI

79. New section XI was adopted.

New section XII

80. Mrs. HIGGINS said that she would like to include in new section XII a question that mentioned the Shiites by name, although she appreciated that subsection (c) could be considered as addressing the issue. There had been considerable criticism that the plight of the Shiites had been ignored while the situation of the Kurds had quite rightly attracted international attention, and in the interests of balance it was desirable specifically to mention the

Shiites in order to give them equal consideration to that given to the Kurds by subsection (a). Accordingly, she suggested inserting the following question before subsection (c): "Please comment on the current status of the Shiites in the south of Iraq."

81. Mr. SADI wondered whether it was correct to refer to the Kurds as a minority, as he believed they represented over 25 per cent of the population of Iraq.

82. Mr. AGUILAR URBINA said that Mr. Sadi had raised an important issue which could be illustrated by the fact that, although women constituted a numerical majority in most societies, they were considered as a minority on account of the manner in which they were treated. He noted that there was a third group in Iraq, the Assyrians, who had suffered as much as or even more than the Kurds. He suggested that a specific question should perhaps be included relating to the situation of the Assyrians who had been the victims of persecution throughout the twentieth century.

83. Mr. EL SHAFEI said that if the words "other than the Kurds" were deleted from subsection (c) the problem would be settled.

84. Mr. NDIAYE said that he did not believe that the concept of a minority was a merely quantitative issue, as could be attested by all those who had experienced colonialism and who, although a majority, had effectively been treated as a minority, by the administration and by law, as was the case of the Kurds and the Shiites.

85. Mr. SADI said that he did not like the association of the term "minority" with a religious subdivision of a society. He felt that the question of the Shiites should be dealt with under the question on religious freedom. Dealing with minorities on a religious basis was likely to create a very dangerous precedent and promote division rather than harmony.

86. Mrs. HIGGINS said that Mr. Sadi seemed to be adopting the view expressed by some States that to accept that certain groups were minorities was divisive, a view she did not share. The Committee had referred to religious minorities before and she had no objection to its doing so now. Furthermore, with reference to the remarks by Mr. Ndiaye, she could not endorse the concept of de facto "minoritization". She pointed out that the question of the blacks in South Africa had been dealt with not as a question of a minority, but as a question of self-determination. However, she could accept a specific question on the situation of the Shiites in connection with article 18 of the Covenant.

87. Mr. AGUILAR URBINA stressed again that groups which might not actually constitute minorities could in fact be discriminated against as such; persons belonging to those groups could be "minoritized" and their rights denied in a manner that constituted a violation of article 27 of the Covenant.

88. Mr. MYULLERSON suggested that, at least as far as the Kurds were concerned, the issue was not so much one of actual or relative numbers as that of determining whether they qualified as a minority for the purposes of article 27 or as a people for the purposes of article 1.

89. Mr. NDIAYE remarked that, irrespective of their numbers, the Shiites in Iraq, besides having been politically marginalized until their spectacular revolt against such treatment, were without question victims of religious discrimination. In his opinion, article 27 of the Covenant certainly applied.

90. Mr. EL SHAFEI submitted that it was rather article 18 which applied, and that the questions to be posed should relate to the application of that article.

91. Mrs. HIGGINS, observing that the matter obviously involved deep differences of opinion, said that her own, personal legal analysis had led her to believe that there existed, under international law, no right of self-determination for the Kurds. That was essentially because the conditions deemed necessary under the law for that right to exist did not pertain. It was, of course, possible that if peoples did break away and establish themselves separately, international law might in due course take acknowledgement of that new reality, but that was not the same as stating that each and every people enjoyed a priori the right of self-determination.

92. That reasoning led her to feel somewhat uneasy about placing the first of the questions posed under section II of the list of issues, although she realized that only autonomy was mentioned therein.

93. The Committee seemed to be divided concerning the actual relation of the questions formulated in new section XII to article 27. Unlike Mr. El Shafei, she considered that the Shiite issue was too broad to be accommodated under article 18. Perhaps, as a compromise, it might be reintroduced as a single topic under the heading of non-discrimination (former section IV, which had been deleted).

94. Mr. ANDO said that he contined to prefer the order of the original draft, but could accept Mrs. Higgins' suggestion concerning the Shiite issue. However, there still remained in new section XII the questions concerning the Kurds. Perhaps the answer would be to combine them in a single section with those posed in relation to article 1.

95. The CHAIRMAN reminded the Committee that, in dealing with communications in the past, it had had some unhappy experiences when the distinction between articles 1 and 27 had become blurred.

96. Mr. SADI considered that all the questions relating to the Kurds might be grouped together and posed with reference to the application of article 1 of the Covenant.

97. Mr. MAVROMMATIS, observing that there were far more Kurds outside than inside Iraq, that their legal status was an issue that would exercise jurists for many years to come, and that the question of their autonomy would be more appropriately discussed in other forums, urged the Committee not to be diverted from its essential concerns. He believed that, apart from the amendment suggested by Mrs. Higgins, the text should remain unchanged.

98. Mr. NDIAYE said that he could accept the suggestion by Mrs. Higgins, but would reserve the right, at an appropriate moment, to address the issue of the Shiites under article 27.

99. New section XII, as amended, was adopted.

100. The list of issues as a whole, as amended, was adopted.

101. The CHAIRMAN invited the Committee to consider the handling of what remained a somewhat lengthy list of issues in the strictly limited time available for consideration of the third periodic report of Iraq. The Bureau recommended that certain of those issues should be singled out as a matter of immediate priority, and that the possibility should be left open of resuming consideration of outstanding issues at the Committee's autumn session.

102. Mrs. HIGGINS suggested that the Committee should address itself in the first instance to the application of articles 6, 7, 9 and 27 of the Covenant, as had been decided at the forty-first session. To those priority concerns might be added questions related to articles 1 and 4, on which, incidentally, the delegation of Iraq might wish to volunteer information. She further suggested that the representatives of Iraq should be notified accordingly.

103. After a procedural discussion in which Mr. MAVROMMATIS, Mr. ANDO, Mr. AGUILAR URBINA, Mrs. HIGGINS, Mr. EL SHAFEI and Mr. NDIAYE took part, the CHAIRMAN suggested that in the Committee's consideration of the third periodic report of Iraq, issues relating to the application of articles 6, 7, 9 and 27 of the Covenant would be addressed in the first instance, to be followed by issues relating to the application of other articles, articles 1 and 4 being taken up preferentially. The list of issues should be appropriately reordered to facilitate consideration of the third periodic report of Iraq in that manner. He also took it that, while every effort would be made to complete discussion of the report during the time allotted at the current session, the possibility of resuming consideration at the Committee's forty-third session would be retained.

104. It was so decided.

The meeting rose at 6 p.m.